

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 289 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SURESH RAMCHANDRA SHARMA YADAV

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
MR KT DAVE A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

Heard learned advocate Mr. S. R. Patel for the petitioner and learned A. G. P. Mr. K. T. Dave for the respondents Nos. 1, 2 and 3.

1. The detention order dated 25.5.1999 passed by the

respondent No. 1, Commissioner of Police, Ahmedabad, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", copy of which is produced at Annexure - "C" at page No. 15 interalia indicate that a prohibition case vide CR No. 179/99 was registered against the petitioner at Gandhinagar Police Station on 19.5.1999. That Indian made foreign liquor alongwith one four wheeler (Fronty car) was seized in the said matter.

The grounds of detention also indicate that three witnesses on assurance of their anonymity have given statements dated 23.5.1999, 23.5.1999 and 24.5.1999 respectively, wherein, the incidents alleged to have been occurred on 2.5.99, 25.4.1999 and 10.5.1999 respectively are narrated.

3. That on the basis of above stated material, the respondent No. 1 as Detaining Authority has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the detention order is bad in law on account of non observation of provisions contained vide Section 9(1) of "PASA". It is submitted that impugned order is of 25.5.1999 and the petitioner was committed on the same day to the Rajkot Jail. That the impugned order as well as the grounds of detention and relevant documents accompanied with the same were served on the petitioner in Gujarati language, which was not known to the petitioner. That thereafter, Hindi translation of order, grounds of detention and other documents are served as late as on 14.6.1999. It is submitted by learned advocate for the petitioner that Section 9(1) of "PASA" prescribe that order as well as other material shall be served to the detenu as soon as may be but not later then seven days from the date of detention. That in the instant case, documents produced

on record, ex-facie suggest that the grounds of detention have been served on 14.6.1999, which is more than 7 days after the date of detention.

5. Despite due service of Rule, none of the respondents has filed any affidavit to controvert the averments made in the petition and has not raised any contention.

6. On plain reading of provisions of Section 9(1) of the "PASA", it is apparent from the material produced on record, that the grounds of detention and other material are supplied after lapse of prescribed period which has rendered the impugned order invalid and the continued detention of the petitioner has become illegal.

6. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide, the other contentions raised in the petition.

7. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 25.5.99 passed by the respondent No. 1 against the petitioner is hereby quashed and set aside. The petitioner Sureshkumar Ramchandra Sharma Yadav, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

Date : 22.02.2000. (A. K. Trivedi, J.)

PALLAV.